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AMENDED AND RESTATED  
PUBLIC WORKS AGREEMENT  
BETWEEN THE CITY OF MILPITAS AND THE  
MILPITAS REDEVELOPMENT AGENCY FOR THE  
CONSTRUCTION OF PUBLIC IMPROVEMENTS

THIS AMENDED AND RESTATED PUBLIC WORKS AGREEMENT (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS, a public body, corporate and politic (the "Agency"), and the CITY OF MILPITAS, a municipal corporation (the "City").

Recitals

A. By Ordinance No. 192 , adopted on September 21, 1976, the City Council of the City of Milpitas adopted and approved a certain Redevelopment Plan (the "Redevelopment Plan") for the Milpitas Redevelopment Project No. 1, which the City has subsequently amended a total of seven times (as amended, the "Project").

B. Pursuant to the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) and its general city powers, the City desires to assist the Agency in the implementation of the Project.

C. On June 4, 2002, the City and the Agency entered into an Agreement for the construction of Pubic Improvements (the "Prior Agreement"). The City and Agency desire that this Agreement replace and supercede the Prior Agreement for all purposes.

D. In furtherance of the Project, the City and Agency desire to enter into an agreement under which the City is required to cause the acquisition and construction of certain public improvements and the performance of certain programs and activities as identified in the Redevelopment Agency Financing pages of the 2002 – 2007 Capital Improvements Program, attached hereto as Attachment No. 1 (the "Public Improvements") to serve and benefit the Project.

E. In return for City's obligation to acquire, construct and perform such Public Improvements, Agency shall pay to City the full cost of the Public Improvements.

F. The Agency and City have determined that the Public Improvements are of benefit to the Project, and that no other reasonable means of financing such Public Improvements are available to the community.

### Agreements

NOW, THEREFORE, THE CITY AND THE AGENCY HEREBY AGREE AS FOLLOWS:

#### Section 1. Agreement Replaces and Supercedes Prior Agreement.

This Agreement shall replace and supercede the "Agreement Between the City of Milpitas and the Milpitas Redevelopment Agency for the Construction of Public Improvements," dated June 4, 2002, for all purposes.

#### Section 2. Purpose of this Agreement.

The purpose of this Agreement is to provide for the acquisition and construction of certain public improvement projects and the performance of certain programs and activities to serve and benefit the Project and to implement and carry out the Redevelopment Plan for the Project.

#### Section 3. Terms of Performance by the City.

The City agrees to cause the acquisition and construction of the public improvement and the performance of the programs and activities referred to in Section 5 to serve and benefit the Project, subject to (1) the request and direction of the Agency as to the location, timing and other specifications and requirements therefor, and (2) compliance with the Redevelopment Plan and all applicable laws with respect to such Public Improvements.

Section 4. Payments by the Agency.

The Agency agrees to pay to the City the cost of the Public Improvements as set forth in Attachment No. 1, subject to (1) any requirements of Agency indebtedness incurred with respect to the Project, and (2) compliance with the Redevelopment Plan and all applicable laws with respect to the Public Improvements.

Section 5. Public Improvements.

The Public Improvements are those identified in the Redevelopment Agency Financing pages of the 2002 – 2007 Capital Improvement Program, attached hereto as Attachment No. 1 and incorporated herein by reference. The Agency, at its sole discretion, shall request and direct the City as to the location, timing and other specifications and requirements for the construction and installation of such Public Improvements, subject to the terms of this Agreement.

Section 6. Authorization of Payments to the City.

Upon demand by the City, the Executive Director of the Agency is directed to pay and transfer to the City, in furtherance of the purposes of this Agreement, the full cost of the Public Improvements as set forth in Attachment No. 1, or any portion thereof as demanded by the City, and the Treasurer of the Agency shall carry out any such directions of the Executive Director.

Section 7. Funds Received by the City.

All funds paid by the Agency to the City under this Agreement shall, upon receipt by the City, be held by the City in consideration for the obligations and undertakings of the City under this Agreement and shall not be used by the City for any purpose inconsistent with the Community Redevelopment Law.

Section 8. Indebtedness of the Agency.

This Agreement constitutes an indebtedness of the Agency incurred in carrying out the Project, and a pledging of tax allocations from the Project to repay such indebtedness, under the provisions of Section 16 of Article XVI of the California Constitution and Sections 33670-33679 of the Health and Safety Code; provided, however, that such pledge of tax allocations shall always be subordinate and subject to

the right of the Agency to pledge or commit tax allocations from the Project to repay bonds or other indebtedness incurred by the Agency in carrying out the Project.

Section 9. Liability and Indemnification.

In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely be reason of such entities being parties to an agreement as defined by Section 895 of said Code, the parties hereto, as between themselves, pursuant to the authorization contained in Section 895.4 and 895.6 of said Code, will each assume the full liability imposed upon it, or any of its officers, agents or employees by law for injury caused by negligent or wrongful act or omission occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above stated purpose, each party indemnifies and holds harmless the other party for any loss, costs, or expense that may be imposed upon such other party by virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if fully set forth herein.

Section 10. Termination of this Agreement.

This Agreement and the obligations of the City and the Agency hereunder shall terminate only upon (1) the mutual agreement of the City or Agency, or (2) the completion of the Public Improvements under this Agreement.

IN WITNESS WHEREOF, the Agency and the City have executed this Agreement as of the date first above written.

REDEVELOPMENT AGENCY OF  
THE CITY OF MILPITAS

By \_\_\_\_\_  
Chairman

By \_\_\_\_\_  
Secretary

"AGENCY"

AND

CITY OF MILPITAS

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
City Clerk

"CITY"

## Attachment No. 1

2002 - 2007 CAPITAL IMPROVEMENT PROGRAM  
REDEVELOPMENT AGENCY FINANCING

RDA Tax Increment (a)	Prior Year	2002-03	2003-04	2004-05	2005-06	2006-07	TOTAL
<b>Summary</b>							
Community Improvement Projects	7,453,662	509,000	1,932,000	2,546,000	1,851,000	410,000	14,701,662
Park Projects	710,000	4,500,000	125,000	1,769,000	3,277,900	4,715,000	15,096,900
Street Projects	14,594,740	1,000,000	2,165,000	935,000	905,000	435,000	20,034,740
Water Projects	1,830,000	535,000	225,000	375,000	25,000	25,000	3,015,000
Sewer Projects	0	0	0	0	0	0	0
Storm Drain Projects	55,000	5,000	10,000	10,000	10,000	10,000	100,000
<b>RDA Tax Increment Total:</b>	<b>\$21,643,402</b>	<b>\$6,549,000</b>	<b>\$4,457,000</b>	<b>\$5,635,000</b>	<b>\$5,068,900</b>	<b>\$9,855,000</b>	<b>\$52,948,302</b>
<b>Community Improvement Projects</b>							
8066 PD/Public Works Building Modifications	1,149,500	0	358,000	0	0	0	1,507,500
8093 Telecommunications Infrastructure	3,927,437	0	600,000	370,000	390,000	360,000	5,647,437
8102 Community Center Renovation	410,000	0	525,000	0	0	0	935,000
8112 GIS	939,750	95,000	154,000	126,000	126,000	0	1,440,750
8134 Senior Center Renovation	180,000	0	0	0	75,000	0	255,000
8135 Miscellaneous City Buildings Improvements	264,975	14,000	50,000	50,000	50,000	50,000	478,975
8137 City Gateway Identification Signs	130,000	400,000	0	100,000	0	0	630,000
8146 City Gateway Improvements on Tasman Dr.	452,000	0	0	0	850,000	0	1,312,000
- Corp Yard 2nd Deck Parking	0	0	120,000	1,900,000	0	0	2,020,000
- Fleet Maintenance Garage Improvements	0	0	0	0	350,000	0	350,000
- General Plan Update	0	0	125,000	0	0	0	125,000
<b>Total:</b>	<b>\$7,453,662</b>	<b>\$509,000</b>	<b>\$1,932,000</b>	<b>\$2,546,000</b>	<b>\$1,851,000</b>	<b>\$410,000</b>	<b>\$14,701,662</b>
<b>Park Projects</b>							
5068 Park Path Resurfacing	35,000	0	0	40,000	0	40,000	115,000
5075 Coyote Creek Trail Reach 2	75,000	0	0	469,000	0	0	544,000
8149 Milpitas Sports Center Master Plan Improvements: Phase 1	500,000	4,500,000	0	0	0	0	5,100,000
- Coyote Creek Trail Reach 3	0	0	0	115,000	717,900	0	832,900
- Milpitas Sports Center Master Plan Improvements: Phase 2	0	0	125,000	925,000	0	0	1,050,000
- Milpitas Sports Center Master Plan Improvements: Phase 3	0	0	0	220,000	2,150,000	0	2,370,000
- Milpitas Sports Center Master Plan Improvements: Phase 4	0	0	0	0	410,000	4,675,000	5,085,000
<b>Total:</b>	<b>\$710,000</b>	<b>\$4,500,000</b>	<b>\$125,000</b>	<b>\$1,769,000</b>	<b>\$3,277,900</b>	<b>\$4,715,000</b>	<b>\$15,096,900</b>
<b>Street Projects</b>							
4067 Annual Sidewalk Replacement	90,000	40,000	40,000	40,000	40,000	40,000	290,000
4133 Tasman Extension - Great Mall Parkway to I-880	12,514,740	0	1,210,000	0	0	0	13,724,740
4167 Traffic Signal Modifications	0	70,000	0	0	0	0	70,000
4173 Audible Pedestrian Signal Installation	0	0	5,000	5,000	5,000	5,000	20,000
4182 Pavement Improvement Program	1,060,000	200,000	200,000	200,000	200,000	200,000	2,060,000
4189 Traffic Signal Interconnect	100,000	0	120,000	0	0	0	220,000
4200 Singley Area Street Rehabilitation	200,000	580,000	0	0	0	0	780,000
4204 Automated Irrigation System	135,000	100,000	0	0	0	0	235,000
4213 Alt. Alignment Study Ped/Bicycle Overcrossing	20,000	10,000	0	0	0	0	30,000
4215 Interchange Landscaping Project	100,000	0	400,000	500,000	0	0	1,000,000
4216 Street Landscaping Program	375,000	0	175,000	175,000	175,000	175,000	1,075,000
- McCarthy Blvd. Sidewalk	0	0	0	0	470,000	0	470,000
- Street Light Upgrades	0	0	15,000	15,000	15,000	15,000	60,000
<b>Total:</b>	<b>\$14,594,740</b>	<b>\$1,000,000</b>	<b>\$2,165,000</b>	<b>\$935,000</b>	<b>\$905,000</b>	<b>\$435,000</b>	<b>\$20,034,740</b>
<b>Water Projects</b>							
7076 Well Upgrade Program	925,000	535,000	0	0	0	0	1,460,000
7086 Water System Air Relief Valve Modifications	35,000	0	25,000	25,000	25,000	25,000	135,000
7093 Ayer Reservoir & Pump Station Improvements	470,000	0	200,000	0	0	0	670,000
7094 Gibraltar Reservoir & Pump Station Improvements	400,000	0	0	350,000	0	0	750,000
<b>Total:</b>	<b>\$1,830,000</b>	<b>\$535,000</b>	<b>\$225,000</b>	<b>\$375,000</b>	<b>\$25,000</b>	<b>\$25,000</b>	<b>\$3,015,000</b>
<b>Sewer Projects</b>							
none	0	0	0	0	0	0	0
<b>Total:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Storm Drain Projects</b>							
3371 Miscellaneous Minor Storm Drain Projects	55,000	5,000	10,000	10,000	10,000	10,000	100,000
<b>Total:</b>	<b>\$55,000</b>	<b>\$5,000</b>	<b>\$10,000</b>	<b>\$10,000</b>	<b>\$10,000</b>	<b>\$10,000</b>	<b>\$100,000</b>

(a) RDA funding dependent upon cap revision and subsequent fund availability.

New projects listed in **Bold Italics**.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION DECLARING INTENTION TO REIMBURSE  
EXPENDITURES FROM THE PROCEEDS OF OBLIGATIONS  
TO BE ISSUED BY THE REDEVELOPMENT AGENCY  
AND DIRECTING CERTAIN ACTIONS OF THE  
MILPITAS REDEVELOPMENT AGENCY**

**RESOLVED**, by the Milpitas Redevelopment Agency:

**WHEREAS**, the Agency proposes to undertake the project referenced below, to issue debt for such project and to use a portion of the proceeds of such debt to reimburse expenditures made for the project prior to the issuance of the debt;

**WHEREAS**, United States Income Tax Regulations Section 1.150.2 provides generally that proceeds of tax-exempt debt are not deemed to be expended when such proceeds are used for reimbursement of expenditures made prior to the date of issuance of such debt unless certain procedures are followed, one of which is a requirement that (with certain exceptions), prior to the payment of any such expenditure, the issuer declares an intention to reimburse such expenditure; and

**WHEREAS**, it is in the public interest and for the public benefit that the Agency declares its official intent to reimburse the expenditures referenced herein.

**NOW, THEREFORE**, it is hereby DECLARED and ORDERED, as follows:

1. The Agency intends to issue obligations (the "Obligations") for the purpose of paying the costs of a new Library, Senior Center, and land acquisition (collectively, the "Project").
2. The Agency hereby declares that it reasonably expects (i) to pay certain costs of the Project prior to the date of issuance of the Obligations and (ii) to use a portion of the proceeds of the Obligations for reimbursement of expenditures for the Project that are paid before the date of issuance of the Obligations.
3. The maximum principal amount of the Obligations is \$11,705,000.

**PASSED AND ADOPTED** this 21<sup>st</sup> day of January, 2003, by the following vote of the Redevelopment Agency and the City Council of the City of Milpitas.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Gail Blalock, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor/Chairperson

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven T. Mattas, City Attorney